

DRAFT

Area-Wide Soil Contamination Task Force – Meeting 11 June 2, 2003, Yakima, WA

Meeting Summary

The Area-Wide Soil Contamination Task Force met for the eleventh time on June 2, 2003 in Yakima. This meeting focused on refining the draft Task Force report and recommendations based on previous comments from Task Force members and from members of the public who participated in focus group meetings or provided written comments in May about the preliminary Task Force recommendations.

Review of Public Involvement Process

Sarah Hubbard-Gray of Hubbard-Gray Consulting gave an overview of the Task Force public involvement activities that occurred in May to solicit feedback on the Task Force's preliminary recommendations. She noted that over 45 people attended the five focus group meetings held in Spokane, Wenatchee, SeaTac, and Yakima; that 17 people answered the questionnaire about the preliminary recommendations; and that nine people sent letters or e-mail messages to provide additional comments for Task Force consideration.

Task Force members met via conference call three times before this meeting to consider and discuss comments from the public and identify changes needed to the Task Force's recommendations. Examples of the recommendations that changed based on comments from the public include recommendations for outreach to childcare providers, an expansion of the flowchart for individual property evaluations to include smelter areas, and recommendations for providing guidance on standard protocols to use during construction on open land.

Discussion of Consensus

Bill Ross of Ross & Associates outlined the remaining Task Force process, including reaching consensus on the final Task Force report. The Task Force has only one scheduled meeting remaining (June 16th at SeaTac) and their final report is due to the chartering agencies at the end of June. Mr. Ross explained that, as outlined in the Task Force ground rules, the desired outcome of the Task Force remains a set of findings and recommendations that all Task Force members support. Every aspect of the report may not be "perfect" in the eyes of individual Task Force members, but, each Task Force member should be able to "live with" the report as a whole. To the extent this is not achieved, the Task Force report will reflect and describe the range of views across the Task Force. Task Force members indicated their desire to strive for consensus and to avoid having minority reports, or other text describing a range of views about the recommendations.

Update on Task Force Progress

Elizabeth McManus of Ross & Associates gave an update on the progress the Task Force has made since the April Task Force meeting, noting that most of the Task Force's recommendations have been stable. She said that the Model Toxics Control Act (MTCA)

subgroup has continued to work on developing a viable alternative to the traditional MTCA process for properties affected by area-wide soil contamination. The Subgroup is working to find a viable alternative that would achieve a variety of objectives while avoiding unintended consequences. Linda Hoffman, Deputy Director of the Department of Ecology (Ecology), observed that Ecology is pleased with the Task Force's progress and its continuing efforts to reach consensus on an alternative approach under MTCA.

Descriptions of Low-to-Moderate Levels and Health Risks

The Task Force members reviewed new text describing the meaning of “low-to-moderate” levels of soil arsenic and lead, which is based on how Ecology currently uses the term in ongoing cleanup projects. Some Task Force members were concerned that the upper ends of the ranges were not “moderate” levels, but the Task Force accepted the text in general, with one editorial change noted below.

Task Force members also reviewed a revised description of the health risks from exposure to low-to-moderate levels of arsenic and lead in soil and the Task Force's guiding principles for developing recommendations. New guiding principles included in the Task Force report are (a) use a balanced approach and (b) focus on controlling exposure. The Task Force co-chairs noted that they had worked with the project team to develop the revised language on health risks. Task Force members approved the revised language, but decided to move the text describing health effects from exposure to high levels of arsenic and lead to an appendix.

Changes to the Task Force report from this discussion include the following:

- Revise the description of “low-to-moderate” to clarify that concentrations range “up to” the levels noted in the text.
- Add textboxes describing the risks from exposure to lead from home remedies containing lead (include the product names, if known) and from lead-based paint.
- Move the description of health effects from exposure to high levels of arsenic and lead to an appendix.

Maps and Text on the Nature and Extent of Area-Wide Soil Contamination

Elizabeth McManus of Ross & Associates noted that many participants of the focus group meetings in May supported the idea of maps, but had concerns that the maps, particularly the smaller scale lead arsenate maps, could be misinterpreted or misused. She also reviewed the main changes made to text describing the Task Force's findings and recommendations on the nature and extent of area-wide soil contamination in Washington, including placing increased emphasis on the use of the individual property evaluation flowchart (formerly called the lead arsenate pesticide contamination flowchart) to determine whether area-wide soil contamination is likely to be present. Task Force members discussed how to address the concerns about the maps and decided to clarify that the tier 2 maps for smelter and orchard areas are examples of maps that might be developed to supplement the use of the flowchart.

Changes to the Task Force report from this discussion include the following:

- Revise the disclaimers in the maps to emphasize that site-specific assessments are needed to determine whether contamination is present and make other editorial changes to the titles and disclaimers.
- Move the tier 2 maps to an appendix in the report and clearly mark the maps as “example” documents.
- Clarify that one type of tier 2 lead arsenate map is based on applying the flowchart to determine whether orchards might have been present.
- Amend the flowchart to use an elevation of 2,000 feet, rather than 2,500 feet, as the upper limit of historical orchards in Yakima County.
- Omit the text describing anecdotal reports of arsenic leaching.

Text on the Range of Protective Measures Considered and Broad-Based Education and Awareness Building Recommendations

The Task Force reviewed the main changes made to the draft text describing the range of protective measures the Task Force considered and recommendations for broad-based education and awareness building, as well as the contents of a revised “toolbox” of information on area-wide soil contamination. Based on this discussion, the Task Force decided to:

- Move the description and summary table of the evaluation of protective measures to an appendix and only reference it in the body of the report.
- Make clarifying changes to the description of protective measure categories and rankings.
- Make editorial corrections to text explaining the Task Force’s rationale for broad-based education and awareness building, and add text describing that the Task Force believes the effectiveness of education likely will be enhanced by the combination of education programs and step wise approach recommended by the Task Force.
- Discuss the draft sampling guidance (included in the toolbox) in a separate conference call.

Land-Use Scenario Recommendations: Child-Use Areas, Residential Areas, Commercial Areas, and Open Land

Elizabeth McManus reviewed and the Task Force discussed the main changes made to the draft text describing the Task Force recommendations for child-use areas, residential areas, commercial areas, and open land (formerly called vacant land).

The Task Force suggested the following changes to the text on land-use scenarios:

- Create a textbox on real estate disclosure requirements to place near the text on data confidentiality for residential sampling.
- Clarify and expand on the recommendations that the Agencies help residents to obtain soil that is suitable for its intended use.
- Clarify that agricultural land must be intended to be returned to active production to be considered “fallow” noting that fallow is a term that is most applicable to dry land wheat farming, rather than perennial crops (there is no similar term for perennial crops).
- Remove the text describing differing views on the Task Force from the textbox on large construction sites, add the concern about wind-blown dust, and note the importance of enforcing existing regulations.

- Clarify the Task Force recommendations for using plat notices to better match the development process and to provide local governments with discretion to determine what information to include on the notices (plat notices are usually placed prior to development, not after).

The Task Force did not suggest any revisions to the text on child-use areas or commercial areas beyond the changes made since the April Task Force meeting, which included refinements to recommendations for targeted outreach and certification for childcare providers and new text describing current approaches at child-use areas and recommended approaches for mixed-use developments.

Additional Information Needed on Ecological Risks, Health, and Roadside Lead Contamination

The Task Force reviewed the draft text describing recommendations for a study of the ecological impacts of area-wide soil contamination and decided to accept the recommendations. Task Force members reiterated their desire to strive for agreement and to avoid having minority reports, or other text describing a range of views about the recommendations. The Task Force suggested the following changes to the text on additional information needed:

- Remove the text describing the range of views on the Task Force about the need for a study of ecological impacts.
- Move the ecological risk text to the section of the report on additional information needed, which includes recommendations for health monitoring and study of roadside lead contamination.

Cost Estimates and Funding Recommendations

The Task Force reviewed the draft text describing the cost estimates developed by the project team, guiding principles for funding recommendations, and the specific recommendations on funding responses to area-wide soil contamination. Task Force members commented that the Task Force report should acknowledge that property owners will incur many of the costs of implementing the Task Force recommendations and that a broader discussion of current funding approaches, including funding from potentially liable parties, was needed in the introduction to this section. Finally, Task Force members decided to recommend the use of school construction funds to implement the Task Force recommendations, rather than document a range of views about that funding approach.

The Task Force suggested the following changes to the text on costs and funding:

- Move the text and tables describing the cost estimates to an appendix.
- Add text indicating that the Task Force has not attempted to match cost estimates to funding sources.
- Add introductory text describing that both residents and government agencies will bear some of the cost of implementing Task Force recommendations and that the Task Force emphasizes the use of existing programs or activities to implement its recommendations.
- Describe the current system of seeking funding from potentially liable parties and note that the Task Force expects that process to continue.

- Simplify the language in the recommendation for using school construction funds and remove the description of differing views on the Task Force about the recommendation.

Real Estate Disclosure Recommendations

The Task Force reviewed the text describing recommendations for expanded real estate disclosure (the same recommendations discussed at the April Task Force meeting), approved the recommendations, and discussed the specific kinds of information sellers would need to disclose about area-wide soil contamination (e.g., knowledge of whether the property is in an area-wide soil contamination “zone”).

Approach to MTCA for Area-Wide Soil Contamination

Bill Ross of Ross & Associates noted that the MTCA subgroup has continued to meet since the April 24 Task Force meeting, but has not yet completed its recommendations for an alternative approach to MTCA for properties with area-wide soil contamination. With the MTCA subgroup planning to meet again before the next full Task Force meeting, he asked Task Force members to comment on their interests and desired outcomes for an alternative MTCA approach.

Key interests and desired outcomes expressed by Task Force members include the following:

- A reasonable, viable alternative approach under MTCA that does not involve individual property listings or “MTCA free” zones where contamination is present
- Incentives to implement the Task Force recommendations in order to minimize exposure and protect public health with the least economic impact to communities
- Certainty and predictability with respect to what is expected, what Ecology will do where contamination is present, and opportunities for property owners to achieve as much certainty as they desire
- Least financial/transactional impact on property owners during real estate transactions where contamination is present
- Least financial/transactional impact in property-specific transactions between property owners and government where contamination is present
- Streamlined system to reflect that properties are clean if contamination is not present

Possible elements of an alternative MTCA approach the Task Force is currently considering include:

- Area-wide soil contamination zones as an alternative to individual property listings
- Enforcement forbearance policy
- Conditional no further action letters
- Self-executing, self-certification models
- Model actions or other standard protocols
- Independent cleanup models
- Real estate disclosure requirements and practices
- Different approaches for different property types (e.g., residential, commercial)

Other elements may be added during ongoing discussions.

The MTCA subgroup will discuss these and other possible elements of an approach to MTCA before the next Task Force meeting in light of the Task Force's desired outcomes in order to reach consensus on the findings and recommendations in the Task Force report.

Agency Update on Other Arsenic and Lead Activities

Dr. Jude Van Buren of the Department of Health commented on a recent article published in the *Wenatchee World* about blood lead screening results. She noted that a different approach is used to screen children for possible lead poisoning in the Central Valley than in other areas, and that based on the information the Department has, the prevalence of childhood blood lead poisoning in that area is similar to the rest of the state. Jim Pendowski of Ecology handed out a written update on the Department's arsenic and lead activities.

Public Comments

There were three opportunities for public comment provided during the meeting, during which the following comments were made.

- Bob Stevens, an Extension Soil Scientist at Washington State University Cooperative Extension in Prosser, commented that the Task Force needs to define what "high" levels are when talking about health risks and that although it is good that the Task Force report discusses leaching, it is unlikely that tree fruit crops were grown on sandy soils much before 1947. He encouraged the Task Force to recommend cost sharing for soil sampling and a simplified, two-step process for residential sampling consisting of taking one composite sample from a residential yard followed by additional sampling if the composite sample had high concentrations of contaminants.
- Karen Pickett of Asarco noted that maps have the potential to frighten people and that for many of the areas shown on the smelter maps as having elevated levels of arsenic or lead, this contamination results from natural background levels or other sources of arsenic and lead. She stated that it was reasonable to reduce the size of the smelter emissions plume shown in Figure 4 (the map of the Tacoma smelter plume) to exclude the areas where soil arsenic concentrations only occasionally exceed 20 ppm (Level 2), because of the similarity to background levels. She recommended that the Task Force stress other sources of arsenic and lead, including lead-based paint, more often in the report. Furthermore, she expressed concern about using funding from smelter operators, which operated legally at the time the emissions occurred, and thought that the State should be providing funding, rather than a single company. Finally, she noted that the Task Force's recommendations would not change the cancer rates in Puget Sound, because the risk from exposure to area-wide soil contamination is small compared to other factors.
- Dave Zamora of private citizen observed that it will be difficult and not very practical to ask children to remove their shoes at schools, and that school districts may resist such a recommendation.
- Ron Anderson, a real estate broker in Yakima, said that area-wide soil contamination zones could be very confusing and that it would be difficult for real estate agents to determine whether contamination was likely present on a specific property. He asked what the real estate disclosure requirements would be for sellers who do not use brokers, and recommended that the responsibility should be placed on all sellers, not simply brokers.

- David Schuler, the president of the Yakima Association of Realtors, asked whether there had been any documented cases or studies of lead or arsenic poisoning from soil contamination.
- Fred Withams, a real estate agent in Yakima, expressed concern that the Task Force's work could scare people as did the report on health effects from the use of Alar (a growth retardant, no longer used) on apples, and that designating contaminated areas could cause economic impacts on communities and motivate people to move to other places. He asked whether the Task Force was required to evaluate potential economic impacts of the recommendations.
- Warren Hansen of Onsite Enterprises suggested that the Task Force recommend that protective measures be implemented during new development on open land based on using qualitative evaluations rather than based on soil tests. He said that the Port of Seattle's written comments to the Task Force more fully explain this suggestion.

Next Steps

- The project team will revise the draft Task Force report and maps based on the Task Force discussion, as noted above. The project team will also contact Task Force members who missed all or part of the Task Force meeting to discuss the meeting's outcomes.
- The project team will schedule a conference call with Task Force members to discuss the draft sampling guidance documents.
- The MTCA subgroup will meet on **Monday, June 9** in the **Snoqualmie Pass area** to refine and develop recommendations for a viable alternative to the traditional MTCA process for properties affected by area-wide soil contamination in light of the interests and desired outcomes discussed by the Task Force.
- The next and final Task Force meeting will be on **June 16, 2003** in **SeaTac**. Task Force members who have comments or concerns about the draft Task Force report should bring them forward *before* the June 16 Task Force meeting.

Meeting Materials

- Agenda
- Summary of the April 24, 2003 Task Force meeting
- Summary of comments from focus group participants
- Summary of public comments on the preliminary Task Force recommendations
- List of major changes to the Task Force report since the 4/24/03 Task Force meeting
- Draft Area-Wide Soil Contamination Task Force report dated 5/30/03
- Appendices for the draft Task Force report:
 - List of appendices
 - Appendix A: Glossary of Terms and Uses
 - Appendix G: Area-Wide Soil Contamination Toolbox
 - Appendix H: Summary of Potential Funding Sources
 - Appendix I: Summary of Task Force Recommendations
 - Appendix J: Supporting Materials and Research for Institutional Frameworks
- Department of Ecology Tacoma Smelter Plume Project pamphlets:
 - Dirt Alert: Arsenic and Lead in Soils

- Child Use Area: Draft Arsenic and Lead Soil Sampling Guidance
- Department of Ecology Associated Lead and Arsenic Related Activities handout
- Department of Health Childhood Lead Poisoning Prevention Program Surveillance Data handout

Members in Attendance

Katherine Bridwell, SAFECO
 Loren Dunn, Riddell Williams for Washington Environmental Council
 Steve Gerritson, Sierra Club
 Jim Hazen, Washington Horticultural Association
 Linda Hoffman, Washington State Department of Ecology
 Steve Kelley, Windermere Real Estate, Wenatchee
 Steve Marek, Tacoma/Pierce County Health Department
 Scott McKinnie, Far West Agribusiness Association
 Laura Mrachek, Cascade Analytical
 Ray Paoletta, City of Yakima
 Craig Trueblood, Preston Gates & Ellis
 Jude Van Buren, Washington State Department of Health
 Mike Wearne, Washington Mutual Bank
 Ann Wick, Washington State Department of Agriculture

Members Unable to Attend

Jon DeJong, Wenatchee School District
 Ted Gage, Washington State Department of Community, Trade and Economic Development
 Frank Peryea, Washington State University Tree Fruit Research and Extension Center
 Randy Phillips, Chelan-Douglas Health District
 Marcia Riggers, Washington State Office of the Superintendent of Public Instruction
 Paul Roberts, City of Everett
 Ken Stanton, Douglas County Commission

Consultant Support

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 Sarah Hubbard-Gray, Hubbard-Gray Consulting
 Elizabeth McManus, Ross & Associates Environmental Consulting
 Bill Ross, Ross & Associates Environmental Consulting
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 Jim Pendowski
 Rick Roeder

Washington State Office of the Attorney General, Ecology Division:

Steve Thiele

Washington State Department of Health:

Jim White